

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Thurgood Marshall United
States Courthouse, 40 Foley Square, in the City of New York,
on the 27th day of December, two thousand sixteen.

PRESENT: RALPH K. WINTER, JR.,
DENNIS JACOBS,
JOSÉ A. CABRANES,
Circuit Judges,

UNITED STATES OF AMERICA,
Appellee,

-v.-

15-3997

RICKY KESSLER,
Defendant-Appellant.

FOR APPELLANT:

FLORIAN MIEDEL, Miedel &
Mysliwiec, LLP, New York, New
York.

FOR APPELLEE:

IAN C. RICHARDSON, for Robert L.
Capers, United States Attorney

1 for the Eastern District of New
2 York.

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4 Appeal from a judgment of the United States District
5 Court for the Eastern District of New York (Irizarry, C.J.).

6 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
7 **AND DECREED** that the judgment of the district court be
8 **AFFIRMED.**

9 Ricky Kessler appeals from the judgment of the United
10 States District Court for the Eastern District of New York
11 (Irizzary, C.J.) imposing a ten-month sentence after his
12 plea to a violation of his conditions of supervised release.
13 We assume the parties' familiarity with the underlying
14 facts, the procedural history, and the issues presented for
15 review. We affirm because the district court's within-
16 Guidelines sentence was neither procedurally nor
17 substantively unreasonable.

18 Kessler did not preserve his procedural objections to
19 the sentence, and we therefore review them for plain error.
20 United States v. Aldeen, 792 F.3d 247, 253 (2d Cir. 2015),
21 as amended (July 22, 2015). Kessler's first procedural
22 objection is that the district court failed to adequately
23 explain the reasons for his sentence. Although the district
24 court must "state in open court the reasons for its
25 imposition of the particular sentence," 18 U.S.C. §

1 3553(c), it need not individually walk through all the
2 sentencing factors of § 3553(a). United States v.
3 Villafuerte, 502 F.3d 204, 210 (2d Cir. 2007). "Where, as
4 here, the sentence concerns a violation of supervised
5 release and the ultimate sentence is within the recommended
6 range, compliance with the statutory requirements can be
7 minimal." United States v. Cassesse, 685 F.3d 186, 192 (2d
8 Cir. 2012). The district court acknowledged its need to
9 consider the § 3553(a) factors and explained the reason for
10 its sentence in detail. There was no plain error.

11 Second, Kessler argues that the district court
12 sentenced him under the mistaken belief that he had failed
13 to seek employment. Even if the district court was wrong to
14 blame Kessler for failing to seek employment (and it is not
15 clear that it was), that mistake was only a small part of
16 the sentencing colloquy, and Kessler did not object to it at
17 the time. It is not an error that "seriously affected the
18 fairness, integrity, or public reputation of the judicial
19 proceedings," and it is therefore not a plain error that
20 requires resentencing. Villafuerte 502 F.3d at 209
21 (internal quotations omitted).

22 Third, Kessler argues that the district court sentenced
23 him under the mistaken belief that he owed restitution.
24 However, Kessler advised the district court of this mistake

1 before the imposition of the sentence, and the district
2 court thanked him for the correction. This too is not plain
3 error.

4 As to the length of the sentence, Kessler argues that
5 his within-Guidelines sentence of ten months was "so
6 shockingly high . . . or otherwise unsupportable as a matter
7 of law that allowing [it] to stand would damage the
8 administration of justice." Aldeen, 792 F.3d at 255
9 (internal quotations omitted). Kessler's sentence was well
10 "within the range of permissible decisions" and was
11 therefore substantively reasonable. Id.

12 For the foregoing reasons, and finding no merit in
13 Kessler's other arguments, we hereby **AFFIRM** the judgment of
14 the district court.

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17 FOR THE COURT:
18 CATHERINE O'HAGAN WOLFE, CLERK
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